

[Committee Print]

JULY 29, 1999

SHOWING THE TEXT OF H.R. 1858
AS AMENDED BY THE SUBCOMMITTEE ON
FINANCE AND HAZARDOUS MATERIALS AND
THE SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE, AND CONSUMER PROTECTION

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Consumer and Investor
3 Access to Information Act of 1999”.

4 **TITLE I—COMMERCE IN DUPLI-**
5 **CATED DATABASES PROHIB-**
6 **ITED**

7 **SEC. 101. DEFINITIONS.**

8 As used in this title:

9 (1) DATABASE.—(A) The term “database”
10 means a collection of a large number of discrete
11 items of information that have been collected and or-
12 ganized in a single place, or in such a way as to be
13 accessible through a single source, through the in-
14 vestment of substantial monetary or other resources,
15 for the purpose of providing access to those discrete
16 items of information by users of the database. Such
17 term does not include works that are combined and

1 ordered in a logical progression or other meaningful
2 way in order to tell a story, communicate a message,
3 represent an idea, or achieve a result.

4 (B) If a database is organized into discrete sec-
5 tions containing a large number of discrete items of
6 information, each section may be treated as a data-
7 base if each such section meets the requirements of
8 subparagraph (A).

9 (2) DUPLICATE OF A DATABASE.—A database
10 is “a duplicate” of any other database if the data-
11 base is substantially the same as such other data-
12 base, as a result of the extraction of information
13 from such other database.

14 (3) INFORMATION.—The term “information”
15 means facts, data, or any other intangible material
16 capable of being collected and organized in a system-
17 atic way, with the exception of works of authorship
18 within the meaning of section 102 of title 17, United
19 States Code.

20 (4) COMMERCE.—The term “commerce” means
21 all commerce which may be lawfully regulated by the
22 Congress.

23 (5) IN COMPETITION.—The term “in competi-
24 tion with” when used with respect to the sale or dis-

1 tribution of a database to the public means that the
2 database—

3 (A) displaces substantial sales or licenses
4 of the database of which it is a duplicate; and

5 (B) significantly threatens the opportunity
6 to recover a reasonable return on the invest-
7 ment in the collecting or organizing of the du-
8 plicated database.

9 (6) GOVERNMENT DATABASE.—The term “gov-
10 ernment database” means a database that—

11 (A) has been collected or maintained by
12 the United States of America, any foreign gov-
13 ernment, or any agency or instrumentality
14 thereof; or

15 (B) is required by Federal statute or regu-
16 lation to be collected or maintained, to the ex-
17 tent so required.

18 **SEC. 102. PROHIBITION AGAINST DISTRIBUTION OF DUPLI-**
19 **CATES.**

20 It is unlawful for any person, by any means or instru-
21 mentality of interstate or foreign commerce or commu-
22 nications, to sell or distribute to the public a database
23 that—

24 (1) is a duplicate of another database that was
25 collected and organized by another person; and

1 (2) is sold or distributed in commerce in com-
2 petition with that other database.

3 **SEC. 103. PERMITTED ACTS.**

4 (a) COLLECTING OR USE OF INFORMATION OB-
5 TAINED THROUGH OTHER MEANS.—Nothing in this title
6 shall restrict any person from selling or distributing to the
7 public a database consisting of information obtained by
8 means other than by extracting it from a database col-
9 lected and organized by another person.

10 (b) NEWS REPORTING.—Nothing in this title shall
11 restrict any person from selling or distributing to the pub-
12 lic a duplicate of a services provider database for the sole
13 purpose of news reporting, including news gathering and
14 dissemination, or comment, unless the information dupli-
15 cated is time sensitive and has been collected by a news
16 reporting entity, and the sale or distribution is part of a
17 consistent pattern engaged in for the purpose of direct
18 competition.

19 (c) LAW ENFORCEMENT AND INTELLIGENCE ACTIVI-
20 TIES.—Nothing in this title shall prohibit an officer,
21 agent, or employee of the United States, a State, or a po-
22 litical subdivision of a State, or a person acting under con-
23 tract of such officers, agents or employees, from selling
24 or distributing to the public a duplicate of a database as

1 part of lawfully authorized law enforcement or intelligence
2 activities.

3 (d) SCIENTIFIC, EDUCATIONAL, OR RESEARCH
4 USES.—No person or entity who for scientific, edu-
5 cational, or research purposes sells or distributes to the
6 public a duplicate of a database that has been collected
7 or organized by another person or entity shall incur liabil-
8 ity under this title so long as such conduct is not part
9 of a consistent pattern engaged in for the purpose of com-
10 petition with that other person.

11 **SEC. 104. EXCLUSIONS.**

12 (a) GOVERNMENT INFORMATION.—

13 (1) EXCLUSION OF GOVERNMENT DATA-
14 BASES.—Protection under section 102 shall not ex-
15 tend to government databases.

16 (2) INCORPORATED NONGOVERNMENT POR-
17 TIONS PROTECTED.—The incorporation of all or part
18 of a government database into a non-government
19 database does not preclude protection for the por-
20 tions of services provider the non-government data-
21 base which came from a source other than the gov-
22 ernment database.

23 (3) AUTHORITY TO EXCLUDE ADDITIONAL GOV-
24 ERNMENT-SUPPORTED DATABASES.—Nothing in this
25 title shall prevent the Federal Government or a

1 State or local government from establishing by law
2 or contract that a database, the creation or mainte-
3 nance of which is substantially funded by such Fed-
4 eral, State, or local government, shall not be subject
5 to the protection afforded under this title.

6 (b) DATABASES RELATED TO INTERNET COMMU-
7 NICATIONS.—Protection under section 102 does not ex-
8 tend to a database incorporating information collected or
9 organized—

10 (1) to perform the function of addressing, rout-
11 ing, forwarding, transmitting, or storing Internet
12 communications; or

13 (2) to perform the function of providing or re-
14 ceiving connections for Internet communications.

15 (c) COMPUTER PROGRAMS.—

16 (1) PROTECTION NOT EXTENDED.—Subject to
17 paragraph (2), protection under section 102 shall
18 not extend to computer programs, including any
19 computer program used in the manufacture, produc-
20 tion, operation, or maintenance of a database, or
21 any element of a computer program necessary to its
22 operation.

23 (2) INCORPORATED DATABASES.—A database
24 that is otherwise subject to protection under section
25 102 is not disqualified from such protection solely

1 because it resides in a computer program, so long as
2 the database functions as a database within the
3 meaning of this title.

4 (d) NONPROTECTABLE SUBJECT MATTER.—Protec-
5 tion for databases under section 102 does not extend to
6 the sale or distribution to the public of a duplicate of any
7 individual idea, fact, procedure, system, method of oper-
8 ation, concept, principle, or discovery.

9 (e) SUBSCRIBER LIST INFORMATION.—Protection for
10 databases under section 102 does not extend to subscriber
11 list information within the meaning of section 222(f) of
12 the Communications Act of 1934 (47 U.S.C. 222(f)).
13 Nothing in this subsection shall affect the operation of sec-
14 tion 222(e) of such Act, under which a telecommunications
15 carrier provides, upon request, subscriber list information
16 for the purposes of publishing directories in any format
17 under nondiscriminatory and reasonable rates, terms, and
18 conditions.

19 (f) LEGAL MATERIALS.—Protection under section
20 102 shall not extend to primary legal materials, including
21 court opinions, statutes, codes, regulations, or administra-
22 tive agency decisions, from any Federal, State, or local
23 jurisdiction, unless such materials were permanently avail-
24 able on an interactive computer network without restric-

1 tion, in an official publicly accessible electronic form with-
2 out charge, at the time the extraction occurred.

3 **SEC. 105. RELATIONSHIP TO OTHER LAWS.**

4 (a) OTHER RIGHTS NOT AFFECTED.—Subject to
5 subsection (b), nothing in this title shall affect rights, limi-
6 tations, or remedies concerning copyright, or any other
7 rights or obligations relating to information, including
8 laws with respect to patent, trademark, design rights,
9 antitrust, trade secrets, privacy, access to public docu-
10 ments, misuse, and the law of contract.

11 (b) PREEMPTION OF STATE LAW.—On or after the
12 effective date of this Act, no State law that prohibits or
13 that otherwise regulates conduct that is subject to the pro-
14 hibitions specified in section 102 shall be effective to the
15 extent that such State law is inconsistent with section 102.

16 (c) LICENSING.—Subject to the provisions on misuse
17 in section 106(b), nothing in this title shall restrict the
18 rights of parties freely to enter into licenses or any other
19 contracts with respect to the use of information.

20 (d) COMMUNICATIONS ACT OF 1934.—Nothing in
21 this title shall affect the operation of the Communications
22 Act of 1934 (47 U.S.C. 151 et seq.) or the authority of
23 the Federal Communications Commission.

1 **SEC. 106. LIMITATIONS ON LIABILITY.**

2 (a) **SERVICE PROVIDER LIABILITY.**—A provider of
3 telecommunications services or information services (with-
4 in the meaning of section 3 of the Communications Act
5 of 1934 (47 U.S.C. 153)), or the operator of facilities
6 therefor, shall not be liable for a violation of section 102
7 if such provider or operator did not initially place the data-
8 base that is the subject of the violation on a system or
9 network controlled by such provider or operator.

10 (b) **MISUSE.**—A person shall not be liable for a viola-
11 tion of section 102 if the person benefiting from the pro-
12 tection afforded a database under section 102 misuses the
13 protection. In determining whether a person has misused
14 the protection afforded under this title, the following fac-
15 tors, among others, shall be considered:

16 (1) the extent to which the ability of persons to
17 engage in the permitted acts under this title has
18 been frustrated by contractual arrangements or
19 technological measures;

20 (2) the extent to which information contained in
21 a database that is the sole source of the information
22 contained therein is made available through licensing
23 or sale on reasonable terms and conditions;

24 (3) the extent to which the license or sale of in-
25 formation contained in a database protected under
26 this title has been conditioned on the acquisition or

1 license of any other product or service, or on the
2 performance of any action, not directly related to the
3 license or sale;

4 (4) the extent to which access to information
5 necessary for research, competition, or innovation
6 purposes has been prevented;

7 (5) the extent to which the manner of asserting
8 rights granted under this title constitutes a barrier
9 to entry into the relevant database market; and

10 (6) the extent to which the judicially developed
11 doctrines of misuse in other areas of the law may
12 appropriately be extended to the case or controversy.

13 **SEC. 107. ENFORCEMENT.**

14 (a) USE OF FEDERAL TRADE COMMISSION ACT AU-
15 THORITY.—The Federal Trade Commission shall have ju-
16 risdiction, under section 5 of the Federal Trade Commis-
17 sion Act (15 U.S.C. 45), to prevent violations of section
18 102 of this title.

19 (b) RULEMAKING AUTHORITY.—The Federal Trade
20 Commission may, pursuant to subparagraph (A) or (B)
21 of section 18(a) of the Federal Trade Commission Act (15
22 U.S.C. 57a(a)), but without regard to the limitations con-
23 tained in section 18(b)(3) of such Act, prescribe rules to
24 implement this title.

1 (c) ENFORCEMENT.—Any violation of any rule pre-
2 scribed under subsection (b) shall be treated as a violation
3 of a rule respecting unfair or deceptive acts or practices
4 under section 5 of the Federal Trade Commission Act (15
5 U.S.C. 45). Notwithstanding section 5(a)(2) of such Act
6 (15 U.S.C. 45(a)(2)), communications common carriers
7 shall be subject to the jurisdiction of the Federal Trade
8 Commission for purposes of this title.

9 (d) ACTIONS BY THE COMMISSION.—The Federal
10 Trade Commission shall prevent any person from violating
11 section 102 or a rule of the Commission under subsection
12 (b) of this section in the same manner, by the same means,
13 and with the same jurisdiction, powers, and duties as
14 though all applicable terms and provisions of the Federal
15 Trade Commission Act (15 U.S.C. 41 et seq.) were incor-
16 porated into and made a part of this title. Any person
17 who violates section 102 or such rule shall be subject to
18 the penalties and entitled to the privileges and immunities
19 provided in the Federal Trade Commission Act in the
20 same manner, by the same means, and with the same ju-
21 risdiction, power, and duties as though all applicable terms
22 and provisions of the Federal Trade Commission Act were
23 incorporated into and made a part of this title.

1 **SEC. 108. REPORT TO CONGRESS.**

2 Not later than 36 months after the date of enactment
3 of this title, the Federal Trade Commission shall report
4 to the Congress on the effect this title has had on elec-
5 tronic commerce and on the United States database indus-
6 try and related parties, including—

7 (1) the availability of databases, search engines,
8 and other tools for locating information necessary
9 for electronic commerce;

10 (2) the extent of competition between database
11 producers, including the concentration of market
12 power within the database industry;

13 (3) the investment in the development and
14 maintenance of databases, including changes in the
15 number and size of databases;

16 (4) the availability of information to industries
17 and researchers which rely upon such availability;

18 (5) whether in the period after enactment of
19 this title database producers have faced unfair com-
20 petition, particularly from publishers in the Euro-
21 pean Union; and

22 (6) the extent to which extraction of informa-
23 tion from databases, to a degree insufficient to re-
24 sult in liability under section 102, is harming data-
25 base producers' incentive to collect and organize
26 databases.

1 **SEC. 109. EFFECTIVE DATE.**

2 This title shall take effect on the date of the enact-
3 ment of this Act, and shall apply to the sale or distribution
4 after that date of a database that was collected and orga-
5 nized after that date.

6 **TITLE II—SECURITIES MARKET**
7 **INFORMATION**

8 **SEC. 201. MISAPPROPRIATION OF REAL-TIME MARKET IN-**
9 **FORMATION.**

10 Section 11A of the Securities Exchange Act of 1934
11 (15 U.S.C. 78k-1) is amended by adding at the end the
12 following new subsection:

13 “(e) MISAPPROPRIATION OF REAL-TIME MARKET IN-
14 FORMATION.—

15 “(1) PROHIBITION AGAINST MISAPPROPRIA-
16 TION.—Subject to paragraphs (3), (4), and (5), any
17 person who—

18 “(A) obtains directly or indirectly from a
19 market information processor real-time market
20 information, and

21 “(B) directly or indirectly sells, distributes
22 or redistributes, or otherwise disseminates such
23 real-time market information, without the au-
24 thorization of the market information processor,
25 shall be liable to that market information processor
26 for the remedies set forth in paragraph (2).

1 “(2) CIVIL REMEDIES.—

2 “(A) CIVIL ACTIONS.—Any person who is
3 injured by a violation of paragraph (1) may
4 bring a civil action for such a violation in an
5 appropriate United States district court, except
6 that any action against a State governmental
7 entity may be brought in any court that has ju-
8 risdiction over claims against such entity.

9 “(B) TEMPORARY AND PERMANENT IN-
10 JUNCTIONS.—Any court having jurisdiction of a
11 civil action under this subsection shall have the
12 power to grant temporary and permanent in-
13 junctions, according to the principles of equity
14 and upon such terms as the court may deem
15 reasonable, to prevent a violation of paragraph
16 (1).

17 “(C) MONETARY RELIEF.—When a viola-
18 tion of paragraph (1) has been established in
19 any civil action arising under this subsection,
20 the plaintiff shall be entitled to recover any
21 damages sustained by the plaintiff.

22 “(D) DISGORGEMENT.—When a violation
23 of paragraph (1) has been established, if the
24 plaintiff is not able to prove recoverable dam-
25 ages to the full extent of the defendant’s mone-

1 tary gain directly attributable to the violation,
2 the court, in its equitable discretion, may order
3 the defendant to disgorge the amount of such
4 monetary gain to the plaintiff.

5 “(3) PERMITTED ACTS.—

6 “(A) GATHERING OR USE OF REAL-TIME
7 MARKET INFORMATION INDEPENDENTLY OB-
8 TAINED.—Nothing in this subsection shall re-
9 strict any person from independently gathering
10 real-time market information, or from redistrib-
11 uting or disseminating such independently gath-
12 ered information.

13 “(B) NEWS REPORTING.—Nothing in this
14 subsection shall restrict any news reporting en-
15 tity from extracting real-time market informa-
16 tion for the sole purpose of news reporting, in-
17 cluding news gathering, dissemination, and
18 comment, unless the extraction is part of a con-
19 sistent pattern of competing with a market in-
20 formation processor in the distribution of real-
21 time market information.

22 “(4) RELATIONSHIP TO OTHER LAWS.—

23 “(A) PREEMPTION.—Subject to subpara-
24 graphs (B), (C), and (D), on and after the date
25 of enactment of this subsection, this section—

1 “(i) shall exclusively govern the unau-
2 thorized extraction, sale, distribution or re-
3 distribution, or other dissemination of real-
4 time market information; and

5 “(ii) shall supersede any other Fed-
6 eral or State law (either statutory or com-
7 mon law) to the extent that—

8 “(I) such other Federal or State
9 law establishes rights and remedies
10 with respect to the unauthorized ex-
11 traction, sale, distribution or redis-
12 tribution, or other dissemination of
13 market information that are different
14 from or in addition to the rights and
15 remedies established by this sub-
16 section; or

17 “(II) such other Federal or State
18 law is inconsistent with this section.

19 “(B) FEDERAL SECURITIES LAWS.—Noth-
20 ing in this subsection shall be construed—

21 “(i) to limit or otherwise affect the
22 application of any provision of the securi-
23 ties laws (as defined in section 3(a)(47)),
24 or the rules and regulations thereunder; or

1 “(ii) to impair or limit the authority
2 of the Commission.

3 “(C) ANTITRUST.—Nothing in this sub-
4 section shall limit in any way the constraints
5 that are imposed by Federal and State antitrust
6 laws on the manner in which products and serv-
7 ices may be provided to the public, including
8 those regarding single suppliers of products and
9 services.

10 “(D) LICENSING.—Nothing in this sub-
11 section shall restrict the rights of parties freely
12 to enter into licenses or any other contracts
13 with respect to the extraction, sale, distribution
14 or redistribution, or other dissemination of real-
15 time market information, and to maintain civil
16 actions under State law to enforce such licenses
17 or contracts.

18 “(5) LIMITATIONS ON ACTIONS.—

19 “(A) CIVIL ACTIONS.—No civil action shall
20 be maintained under this subsection unless it is
21 commenced within one year after the cause of
22 action arises or claim accrues.

23 “(B) ADDITIONAL LIMITATION.—No civil
24 action shall be maintained under this subsection
25 for the extraction, sale, distribution or redis-

1 tribution, or other dissemination of market in-
2 formation that is not real-time market informa-
3 tion.

4 “(C) PERSONS SUBJECT TO CONTRACTUAL
5 REMEDIES.—No civil action shall be maintained
6 under this subsection by a market information
7 processor against any person to whom such
8 processor provides real-time market information
9 pursuant to a contract or agreement between
10 such processor and such person with respect to
11 any real-time market information or any rights
12 or remedies provided pursuant to such contract
13 or agreement.

14 “(6) DEFINITIONS.—As used in this subsection:

15 “(A) MARKET INFORMATION.—The term
16 ‘market information’ means information—

17 “(i) with respect to quotations and
18 transactions in any security; and

19 “(ii) the collection, processing, dis-
20 tribution, and publication of which is sub-
21 ject to this title.

22 “(B) REAL-TIME MARKET INFORMATION.—
23 Taking into account the present state of tech-
24 nology, different types of market data, how
25 market participants use market data, and other

1 relevant factors, the Commission may, con-
2 sistent with the protection of investors and the
3 public interest and with the objectives of this
4 section, prescribe by rule the extent to which
5 market information shall be considered to be
6 real-time market information for purposes of
7 this subsection.

8 “(C) MARKET INFORMATION PROC-
9 ESSOR.—The term ‘market information proc-
10 essor’ with respect to any market information
11 means the securities exchange, self-regulatory
12 organization, securities information processor,
13 or national market system plan administrator
14 that is responsible under this title or the rules
15 or regulations thereunder, for the collection,
16 processing, distribution, and publication of, or
17 preparing for distribution or publication, such
18 market information.”.

19 **SEC. 202. EFFECTIVE DATE.**

20 (a) IN GENERAL.—The amendment made by section
21 201 shall take effect on the date of the enactment of this
22 Act, and shall apply to acts committed on or after that
23 date.

24 (b) PRIOR ACTS NOT AFFECTED.—No person shall
25 be liable under section 11A(e) of the Securities Exchange

1 Act of 1934 (15 U.S.C. 78k-1(e)), as added by section
2 201 of this Act, for the extraction, sale, distribution or
3 redistribution, or other dissemination of real-time market
4 information prior to the date of enactment of this Act,
5 by that person or by that person's predecessor in interest.